



U.S. Citizenship
and Immigration
Services

D4

FILE:

Office: VERMONT SERVICE CENTER

Date:

EAC 03 133 52472

IN RE:

Petitioner:
Beneficiary

AUG 09 2004

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The petition is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the petition after determining that the petitioner had not submitted credible documentary evidence to establish the fiancée relationship within the meaning of section 101(a)(15)(K) of the Act. *Decision of the Director*, dated July 23, 2003.

Section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states, in pertinent part, that a fiancé(e) petition:

... shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within two years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival. . . .

In response to the director's request for evidence and additional information regarding the death of the petitioner's first spouse, the petitioner submitted a letter stating that he was not in possession of the death certificate for his first spouse because he submitted it to the Immigration and Naturalization Service [now Citizenship and Immigration Services] in support of a previous Form I-129F Petition for Alien Fiancé(e) filed on behalf of his second spouse. *Letter from Enoch Eniola Faniyi*, dated May 27, 2003.

On appeal, the petitioner states that he has requested a death certificate for his first wife from Nigeria, but has not received it. The petitioner requests 30-45 days to submit evidence to the AAO. *Form I-290B*, dated August 20, 2003. The AAO notes that approximately one year has elapsed since the filing of the appeal and no additional evidence has been received into the record.

The AAO finds that the record is inconclusive as to whether the petitioner was legally able to conclude a valid marriage at the time of the filing of the Form I-129F petition. The record fails to reflect the date that the first marriage of the petitioner was legally terminated. The petitioner, therefore, has not submitted credible

documentary evidence to establish the fiancée relationship within the meaning of section 214(d) of the Act. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.